

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2009-431-T

| | | |
|--|---|-------------------------|
| IN RE: Application of Kenneth Landert d/b/a |) | |
| Kountry Trans. (f/k/a Kenneth J. Landert |) | |
| d/b/a/ Kountry Limo) for a Class C (Charter) |) | PETITION FOR |
| Certificate of Public Convenience and |) | RECONSIDERATION |
| Necessity for Operation of Motor Vehicle |) | AND/OR REHEARING |
| Carrier |) | |

Kenneth Landert d/b/a Kountry Trans. (f/k/a Kenneth J. Landert d/b/a/ Kountry Limo) (“Petitioner”), pursuant to S.C. Code Ann. §§ 58-5-330 and 1-23-10 *et seq.* and the applicable rules of the South Carolina Public Service Commission (the “Commission”) respectfully requests that the Commission reconsider Order No. 2010-191 (the “Order”) or in the alternative grant Petitioner a rehearing. The Petitioner received the Order on June 2, 2010. In support of its Petition, Petitioner would show this Commission the following:

BACKGROUND

1. The Petitioner’s requested Class C Charter Certificate authority in its Application.
2. The Commission determined that Petitioner has not demonstrated that he is fit and willing and able to perform the services he seeks to perform. (Order at Page 3).
3. The Commission based its decision on a) Petitioner’s driving record (Order at Page 3-4), and b) the testimony of several drivers for Yellow Cab that Petitioner performed transportation without authority (Order at Page 4).

PETITIONER CLEARLY DEMONSTRATED ITS “FITNESS”, “WILLINGNESS”, AND “ABILITY”, AND THE COMMISSION ERRED IN RULING OTHERWISE

1. The substantial evidence on the record in this proceeding clearly demonstrates that Petitioner is “fit, willing, and able” to provide Class C Charter services.

2. The Commission’s ruling does not support a finding that the Petitioner did not demonstrate its fitness, willingness, and ability.

3. With respect to the driving history with which the Commission takes exception, the Petitioner currently possesses *one* adjusted point on his driving record.

4. As the Commission is aware, applicants for certification before this Commission often have been involved in legal and regulatory proceedings of various types, and have some previous infractions. In the overwhelming majority of those cases, the Commission has accepted that the companies have learned from their mistakes, and not punished applicants for mistakes that have been corrected. Significantly, the Commission does not require or customarily conduct a review of the Applicant’s driving record in a proceeding such as this.

5. However, even if the Commission did so, it is undisputed that *presently* Petitioner has a driving record that demonstrates his fitness and ability. The Commission is required to determine an applicant’s fitness, willingness and ability based on present circumstances, and those circumstances show that Petitioner possesses a satisfactory driving record.

6. Additionally, ORS witness Vowell testified that Petitioner is fit, willing and able to provide the services sought in Petitioner’s application, and the Petitioner’s previous driving history did not change Ms. Vowell’s conclusion that Petitioner is entitled to the authority he seeks.

7. The Commission’s rationale would prohibit any carrier or company subject to

previous revocation, dissolution, or sanction in any jurisdiction for any reason – even those matters that have been resolved -- from becoming licensed in South Carolina. After all, any past “failure to comply with the law” could call into question future compliance with the law.

8. Therefore, the Commission’s ruling on this point is clearly arbitrary.

9. On the issue of Petitioner’s alleged operation without authority, the Commission overlooked or misapprehended several key points.

10. First, ORS witness Vowell testified that ORS had received no complaints regarding Petitioner following the ORS investigation of Applicant. Significantly, Ms. Vowell testified that although she received several telephone calls from Intervenor witness John Bacot complaining of the Petitioner *before* the ORS cited Petitioner, the ORS received no such communications from Mr. Bacot or any representative of the Intervenor following the conclusion of the ORS investigation.

11. Given the Intervenor’s relentless and Ahabian interest in the operations of the Petitioner, it strains credulity to accept that the Intervenor and its representatives actually witnessed violations committed by Petitioner, but failed to communicate same to the ORS as Intervenor had previously done so frequently and consistently.

12. Moreover, the testimony of the Intervenor witnesses is the very definition of self-serving. The Intervenor witnesses testified that they had financial interests in this case, characterizing the Petitioner’s operations as “taking money from their pockets.” The Commission historically has discounted completely such self-serving testimony, when it lacks corroboration by an independent witness. See Order No. 2002-260, Docket No. 2001-429-T, April 5, 2002 at p. 14. The Commission must do so in this case, as well.

13. Independent witness Ms. Vowell not only did not corroborate the testimony of the Intervenor witnesses, but in fact directly contradicted their testimony, testifying that to her knowledge Petitioner had not conducted any transportation without authority following the ORS citation.

14. Finally, the Commission does not have sufficient evidence in the record to determine that the complaints of the Intervenors, even if true, involve the operation of a car for hire within the jurisdiction of the Commission.

15. Therefore, the Commission's decision that the Petitioner failed to demonstrate its fitness, willingness, and ability is clearly erroneous in view of the substantial evidence provided on the whole record of this case.

**THE PETITIONER WOULD AGREE TO OPERATE UNDER
"PROBATIONARY STATUS" SUBJECT TO WHATEVER CONDITIONS
THE COMMISSION DEEMS APPROPRIATE**

1. As set out in the record of this case, Petitioner has acknowledged mistakes that took place in the past, learned lessons from those mistakes, and promised compliance going forward.

2. In order to give the Commission additional assurance that indeed the Petitioner will conduct his operations in conformance with all applicable South Carolina laws and Commission Rules and Orders, the Petitioner requests that the Commission grant authority to the Petitioner on a "Probationary Basis" for a time period deemed appropriate by the Commission. During this Probationary time, the Commission and the ORS could conduct whatever oversight and examination of the Petitioner that is deemed necessary and appropriate.

3. Petitioner respectfully submits that allowing the Petitioner to operate under such a

grant of authority would be a more appropriate way to address the Commission's concerns than outright denial. In fact, the Commission has granted a probationary certificate in a number of contexts in the past, based on the type of circumstances present here.

CONCLUSION

The Petitioner satisfied its burden of proof in this case, based upon the applicable statutes, regulations, and Orders of this Commission. As a result, the Commission's ruling was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, violated constitutional or statutory provisions, was in excess of statutory authority granted to the Commission, or was made upon unlawful procedure and was otherwise arbitrary, capricious or characterized by abuse of discretion and/or a clearly unwarranted exercise of discretion.

Therefore, Petitioner asks that the Commission reconsider its Order, and grant authority to the Petitioner consistent therewith, either on a probationary basis or otherwise. In the alternative, the Petitioner requests that the Commission grant Petitioner rehearing of this case.

WHEREFORE, having fully set forth its grounds for this petition, Petitioner respectfully requests that the Commission reconsider Order No. 2010-191, or in the alternative grant Petitioner a rehearing, and grant such other relief as the Commission deems just and proper.

Respectfully submitted,

s/ John J. Pringle, Jr.

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Counsel for Petitioner

June 22, 2010
Columbia, South Carolina

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THE PUBLIC SERVICE COMMISSION OF
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DOCKET NO. 2009-431-T

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| IN RE: |) | |
| |) | |
| Application of Kenneth Landert d/b/a |) | |
| Kountry Trans. (f/k/a Kenneth J. Landert |) | CERTIFICATE OF SERVICE |
| d/b/a Kountry Limo) for a Class C |) | |
| (Charter) Certificate of Public |) | |
| Convenience and Necessity for |) | |
| Operation of Motor Vehicle Carrier |) | |

This is to certify that I have caused to be served this day, one (1) copy of the **Petition for Reconsideration and/or Rehearing** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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June 22, 2010
Columbia, South Carolina